UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DENNY TALADAY, *et al.*,

Plaintiffs,

v.

METROPOLITAN GROUP PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendant.

NO. C14-1290-JPD

MEMORANDUM OPINION

I. INTRODUCTION

This matter was tried to the Court, sitting without a jury, on April 25-28, 2016, and June 13-14, 2016.[1] Dkts. 118-23, 135-36. This action concerns a Metropolitan Group Property and Casualty Insurance Company ("MetLife") homeowners insurance policy issued to the now-deceased plaintiff Rosemarie Taladay. Shortly after Ms. Taladay's death, her home suffered an accidental fire. Two of Ms. Taladay's sons, Gary Taladay and Denny Taladay,[2] bring this action against MetLife alleging that the company breached the contract by

[1] The Court continued the trial on April 28, 2016, due to unfortunate circumstances discussed on the record. Dkt. 123. Proceedings resumed a few weeks later on June 13, 2016.

[2] Denny Taladay brings this action individually and as the administrator of Ms. Taladay's Estate. Ex. 96 (reflecting the parties' understanding to this effect).

wrongfully denying coverage, violated the Insurance Fair Conduct Act ("IFCA"),[3] Washington Consumer Protection Act ("CPA"),[4] and breached the duty of good faith. Dkt. 29.

Specifically, plaintiffs allege that MetLife violated IFCA, the CPA, and breached the duty of good faith by acting unreasonably in the following ways: (1) failing to promptly respond to plaintiffs' inquiries as to whether MetLife was covering their claim, thereby forcing plaintiffs to initiate this action and file numerous motions to preserve their rights under the insurance policy; (2) failing to advise Gary Taladay of his right to Loss of Use benefits under the policy (fair rental value ("FRV") or additional living expenses ("ALE")) and then denying such benefits until the Court ordered payment; (3) adjusting the structure claim with Chase Bank instead of plaintiffs contrary to policy terms; (4) unreasonably denying coverage for necessary repairs to "gut" the first floor of the house due to water damage, rendering the plaintiffs unable to retain a contractor willing to make repairs; (5) concealing a partial inventory list of damaged personal property items generated by MetLife and demanding that plaintiffs create a list of those same items before MetLife would adjust any part of the plaintiffs' insurance claim, including the structure damage and loss of use; and (6) failing to timely pay the structure damage, personal property damage, and loss of use coverage under the policy after MetLife's investigator completed his coverage investigation in September 2014 and recommended normal processing and payment of the claim. MetLife contends that it did not unreasonably deny coverage because plaintiffs failed to mitigate the loss to the first floor of the property as required under the contract, failed to timely submit their receipts for ALE payments, and failed to timely submit a properly completed Proof of Loss form with an inventory of unsalvageable personal property to enable MetLife to adjust the claim.

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[3] RCW 48.30.015 *et seq.*
[4] RCW 19.86 *et seq.*

The Court has now considered the evidence presented at trial, the exhibits admitted into evidence, the parties' briefs, and the arguments of counsel. This memorandum opinion will constitute the Court's Findings of Fact and Conclusions of Law.

II. LEGAL STANDARDS

A. Washington Insurance Fair Conduct Act

IFCA provides that "[a]ny first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action . . . to recover the actual damages sustained, together with the costs of the action, including reasonable attorney's fees and litigation costs...." RCW 48.30.015(1). A court "may, after finding that an insurer has acted unreasonably in denying a claim for coverage or payment of benefits or has violated [certain insurance regulations], increase the total award of damages to an amount not to exceed three times the actual damages." RCW 48.30.015(2). A court "shall, after a finding of unreasonable denial of a claim for coverage or payment of benefits, or after a finding of a violation of a rule in subsection (5) of this section, award reasonable attorney's fees and actual and statutory litigation costs, including expert witness fees, to the first party claimant of an insurance contract who is the prevailing party in such an action." RCW 48.30.015(3). Thus, the statute provides a list of violations that give rise to treble damages or to an award of attorney's fees and costs; this list includes violations of Washington Administrative Code ("WAC") provisions 284–30–330, 350, 360, 370, and 380. RCW 48.30.015(5). However, "an insured cannot base an IFCA claim purely on a violation of Washington's insurance regulations." *Cedar Grove Composting, Inc. v. Ironshore Specialty Ins. Co.*, No. 14-1443-RAJ, 2015 WL 3473465, *6 (W.D. Wash. June 2, 2015).[5] Rather,

[5] There is a split in authority between the Western and Eastern Districts of Washington interpreting IFCA with respect to the issue of whether an insured must show that the insurer

plaintiffs must "allege[] the trigger for an IFCA suit – an unreasonabl[e] deni[al] [of] a claim for coverage or payment of benefits…" *Id.* (quoting RCW 48.30.105(1)).

This Court has recognized that "a refusal to pay a demand for coverage reasonably promptly is an unreasonable denial of benefits, even if only temporary." *Id.* *See also Freeman v. State Farm Mut. Auto. Ins. Co.*, No. 11-761-RAJ, 2012 WL 2891167, at *3 (W.D. Wash. July 16, 2012) ("For purposes of an insured's extracontractual claim, a failure to pay the amount the insured requests is a denial of coverage. Were it otherwise, an insurer could avoid extracontractual liability merely by conceding coverage, paying its insured one dollar, and refusing to pay any more."). When considering whether the statutory language "denial of payment of benefits" requires an outright refusal by the insurer to pay a specific benefit promised by the policy or whether an unreasonably low payment also triggers the statute, this Court has previously held:

> [A]n insurer cannot escape IFCA simply by accepting a claim and paying or offering to pay an unreasonable amount. The benefits to which the first-party insured is entitled are generally described as payment of the reasonable expenses or losses incurred as a result of an insured event. Where the insurer pays or offers to pay a paltry amount that is not in line with the losses claimed, is not based on a reasoned evaluation of the facts (as known or, in some cases, as would have been known had the insurer adequately investigated the claim), and would not compensate the insured for the loss at issue, the benefits promised in the policy are effectively denied. If, on the other hand, the insurer makes a reasonable payment based on the known facts or is making a good faith effort to appropriately value the loss, the fact that the insured did not

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unreasonably denied a claim for coverage or payment of benefits before stating a claim under IFCA, or whether a violation of the enumerated WAC provisions cited in RCW 48.30.015(5) also provide an independent and implied cause of action. *See Langley v. Geico General Insurance Co.*, 89 F.Supp.3d 1083, 1091 (E.D. Wash. 2015) (summarizing caselaw from both districts). This Court follows the law of this district, and finds that "[v]iolations of the regulations enumerated in RCW 48.30.015(5) provide grounds for trebling damages or for an award of attorney's fees; they do not, on their own, provide a cause of action [under IFCA] absent an unreasonable denial of coverage or payment of benefits." *Weinstein & Riley, P.S. v. Westport Ins. Corp.*, No. C08-1694-JLR, 2011 WL 887552, *29 (W.D. Wash. March 14, 2011) (citing RCW 48.30.015(1)). *See also Travelers Indem. Co. v. Bronsink,* No. C08–1524JLR, 2010 WL 148366, at *2 (W.D. Wash. Jan 12, 2010).

> immediately get all of the benefits to which it may ultimately be entitled does not establish an "unreasonable denial of payment of benefits."

Morella v. Safeco Ins. Co. of Illinois, No. 12-0672-RSL, 2013 WL 1562032, at *3 (W.D. Wash. April 12, 2013). Thus, under IFCA the question is whether MetLife's conduct amounted to an unreasonable denial of a claim for coverage or payment of benefits to which plaintiffs were entitled under the policy.

B. Washington Consumer Protection Act and Good Faith

Washington's CPA prohibits "[u]nfair methods and unfair or deceptive acts or practices in the conduct of any trade or commerce." RCW 19.86.020. To prevail in an action under the CPA, plaintiffs must establish that (1) MetLife was engaged in an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) that impacts the public interest, (4) plaintiffs have suffered injury in their business or property, and (5) a causal link exists between the unfair or deceptive act and the injury suffered by plaintiffs. *Panag v. Farmers Ins. Co. of Washington*, 166 Wash.2d 27, 37, 204 P.3d 885 (2009). The first two elements of a CPA action may be satisfied by a legislatively declared per se unfair trade practice. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 791, 719 P.2d 531 (1986). A per se unfair trade practice exists when, by statute, the Legislature declares an unfair or deceptive act in trade or commerce and the statute has been violated.

The Washington Administrative Code provisions governing insurers' conduct operates as such as statute. In other words, a single violation of any one of the WAC regulations governing insurer conduct is an unfair or deceptive act or practice under the CPA. *Anderson v. State Farm Mut. Ins. Co.*, 101 Wash. App. 323, 331, 2 P.3d 1029 (2000) (citing *Industrial*

Indem. Co. v. Kallevig, 114 Wash.2d 907, 924, 792 P.2d 520 (1990)).[6] In addition, the public interest element of a CPA claim may be satisfied by a showing that a statute has been violated which contains a specific legislative declaration of public interest impact. The insurance code begins with such a declaration, acknowledging that "[t]he business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters." RCW 48.01.030.

Thus, the legislature's specific declaration of public interest in insurance matters makes an insurer's violation of the duty of good faith under RCW 48.01.030 a per se violation of the public interest requirement of a CPA claim. *Hangman Ridge*, 105 Wash.2d at 791. Similarly, a violation of any one of the regulations set forth in WAC 284-30-300 through 800 constitutes a breach of the insurer's duty of good faith. *Rizzuti v. Basin Travel Service of Othello, Inc.*, 125 Wash. App. 602, 615-16, 105 P.3d 1012 (2005). Under Washington law, whether an

[6] Relevant to plaintiffs' claims in this case, WAC 284-30-370 requires prompt investigation of a claim by requiring that "every insurer must complete its investigation of a claim within thirty days after notification of the claim, unless the investigation cannot reasonably be completed within that time." This provision does include the caveat that "[a]ll persons involved in the investigation of a claim must provide reasonable assistance to the insurer in order to facilitate compliance with this provision." In addition, WAC 284-30-330 defines nineteen "specific unfair claims settlement practices." WAC 284-30-330(1) prohibits an insurer from "misrepresenting pertinent facts or insurance policy provisions." WAC 284-30-330(2) prohibits an insurer from "failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies." WAC 284-30-330(4) prohibits an insurer from "refusing to pay claims without conducting a reasonable investigation," and WAC 284-30-330(7) prohibits "compelling a first party claimant to initiate or submit to litigation . . . to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in such actions or proceedings." In addition, WAC 284-30-330(6) prohibits "not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear[.]" Finally, WAC 284-30-330(13) prohibits "failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law or denial of a claim or for the offer of a compromise settlement."

insurer acted in good faith in administering a claim depends on the reasonableness of its actions. *Gingrich v. Unigard Sec. Ins. Co.*, 57 Wash.App. 424, 433-34, 788 P.2d 1096 (1996).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The MetLife Homeowners Insurance Policy and July 24, 2013 Accidental Fire

This action concerns a MetLife homeowners insurance policy issued to the now-deceased plaintiff Rosemarie Taladay for her home located at 8702 Lawndale Avenue Southwest in Tacoma, Washington. In the event of a fire, the homeowner's insurance policy includes coverage for structural damage to Ms. Taladay's home, damaged personal property, as well as "loss of use" benefits for the insured for the length of time it should take to repair the home. One of Rosemary Taladay's three sons, Gary Taladay, was living with her in the home at the time of the fire and therefore constitutes an "unnamed insured" under the insurance contract and is entitled to all corresponding policy benefits. Gary's brother Denny Taladay was appointed as the administrator of Ms. Taladay's estate on May 28, 2014. Ex. 124. Gary Taladay and Denny Taladay, as the personal representative of Ms. Taladay's estate, are the two plaintiffs in this action.[7] On December 17, 2015, plaintiffs also exercised their option to have personal property owned by prior guests of the residence, including Denny and their brother Bernard Taladay, covered by their insurance policy.

On July 24, 2013, the Taladay residence suffered an accidental fire in an upstairs attic room that had previously been occupied by the third brother, Bernard. Gary Taladay's voluntary statement to the fire department provides that he had recently replaced a breaker that

[7] At the time of Ms. Taladay's death in May 2013, two of her three sons, Gary and Bernard Taladay, were living with her in the home. Shortly after her death and before the fire, however, Gary evicted Bernard from the residence. Bernard Taladay is not a party to this lawsuit, although plaintiffs elected for his damaged personal property to be covered by the MetLife policy as a prior guest of the residence. Although JP Morgan Chase & Co. ("Chase" or "Chase Bank") is identified on the docket as an interested party, Chase has not been involved in these proceedings.

had been malfunctioning for several days. Gary Taladay was downstairs with a friend at the time of the fire, and they evacuated the home and called the fire department when they saw dark smoke in the stairwell. Ex. 1. Fire crews promptly responded to the house and extinguished the fire. Ex. 2; Ex. 104.

The West Pierce Fire and Rescue Report provides that most of the fire damage was to the attic bedroom, but water damage from the fire department's efforts to extinguish the fire and/or smoke damage was present on the first floor as well:

> 1st floor, no fire damage to 1st floor, limited mainly to water damage. Stairwell leading up to 2nd floor had some smoke damage on the walls going up (Pic #12). Upstairs to the right (Pic #14, 15, 16 17) shows heavy heat and smoke damage. Lots of fire load, clothes, furniture, and trash mainly…
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> Occupants [sic] mom owned the home but had passed 2 months ago. Brother used to live upstairs but was kicked out of the house and had not lived upstairs for quite a while, he last visited about a week ago. Insurance Company [sic] unknown (page 5).

Ex. 104 at 4.

Although water damage is generally an excluded cause of property loss under the policy,[8] direct loss that ensues after water damage "caused by fire" is a covered cause of loss:

> *[W]e pay for direct loss that ensues after water damage if caused by fire, theft or explosion and then we pay only for the ensuing loss.*

Ex. 21 at MET000852 (emphasis added). Another excluded cause of property loss identified in the policy that is relevant to the parties' dispute in this case is "[n]eglect by you to use all reasonable means to save and preserve property at and after the time of a loss, or when property is endangered by a peril insured against." Ex. 21 at MET000853.

[8] Specifically, the policy exclusions identify "Water damage, meaning any loss caused by, resulting from, contributed to or aggravated by" flood, tidal water, or overflow of any body of water, water backed up through sewers or drains, or other water below the surface of the ground. Ex. 21 at MET000852.

B. Plaintiffs Tried Unsuccessfully to Identify the Insurance Company and Reported the Fire to the Mortgagee, JP Morgan Chase

After the fire, Gary Taladay had difficulty discovering the identity of Ms. Taladay's insurance company, in part because he was neither the named insured nor the administrator of her estate. He signed two contracts for Emergency Services from Heritage Restoration ("Heritage") and 1-800-BoardUp, which are affiliated companies with common ownership. Exs. 105, 107.[9] Gary Taladay informed Heritage that he did not know the identity of the insurance company, and that he could not afford to pay for mitigation work on his own.

Several employees from Heritage testified that a "contents crew" removed salvageable items from the house the day after the fire and also attempted to help Gary Taladay locate his late mother's fire insurance policy. Heritage employee Matthew Hollis testified that three to four Heritage employees scoured the house for a couple of weeks trying to find paperwork that would reveal the identity of the insurance company. Although the Heritage crew did not successfully locate the MetLife policy, Mr. Hollis made several phone calls to Ms. Taladay's prior mortgage companies and insurers on plaintiffs' behalf. Every company Mr. Hollis contacted advised him that they did not cover the Taladay property and/or did not know the identity of the insurance company that did. Mr. Hollis' testimony is corroborated by his phone bill, which reflects two calls to the prior mortgagee MetLife Home Loans (not to be confused with defendant MetLife Group Property and Casualty Insurance) and one call to Chase Bank,

[9] The 1-800–BoardUp contract defined emergency services as "undertak[ing] all work to secure Real Property," and noted that "1-800-BoardUp will not go beyond the general scope of the insurance coverage without approval of Owner." Ex. 105. However, if a homeowner cannot afford to pay for emergency board up services to secure the damaged home, 1-800-BoardUp will still perform those services for free. The Heritage contract defined "emergency services" as "all work required to secure and/or mitigate damage to the Real Property," and again provides that "[Heritage] will not go beyond the general scope of the insurance coverage without written approval from Owner/Insured." Ex. 107. As described by one of its longtime employees, the Heritage contract reflected an agreement to repair and restore the property when and if the insurance is located.

among others. Ex. 167. His testimony is also verified by the Fed. R. Civ. P. 30(b)(6) representative for Chase Bank, who testified that Chase received a call from Matthew Hollis in July 2013 reporting a fire at the residence and asking for insurance information, but Mr. Hollis was told by Chase that he was not authorized on the account to speak on behalf of the homeowner. Ex. 3; *see also* Ex. 4 (Chase Bank's process notes reflecting Mr. Hollis' inquiry regarding the steps needed to get the deceased borrower's son authorized). Inexplicably, Chase Bank failed to report the fire to defendant MetLife or follow up on Mr. Hollis' phone call in any way. Dkt. 117 at 3 (pretrial order). Gary Taladay also submitted documents to Chase, including Ms. Taladay's death certificate, in an attempt to have his name added to the mortgage and become authorized to learn the identity of the insurance company. *Id.*

As the fire rendered the home uninhabitable, Gary Taladay was unable to continue living in the home after the fire. He began living in an inexpensive motel called the Western Inn. He was unable to afford both his motel bill and the mortgage, and the mortgage was placed in default by Chase Bank in April 2014. *Id.* Defendant MetLife first received notice of the fire from a third party agent of Chase, Dimont & Associates ("Dimont"), on May 30, 2014, over ten months after the July 24, 2013 loss. Ex. 5 (Dimont's Notice of Claim to MetLife regarding "Fire causing damage to Dwelling").

C. The Fire Suppression Efforts Caused Severe Water Damage to the Home

At trial, numerous witnesses testified regarding the severe water damage to the first floor of the house resulting from the fire department's efforts to extinguish the fire. Battalion Chief Scott Adams from West Pierce Fire and Rescue testified that at least 250 gallons of water flowed into the house from the fire hose. Although Chief Adams did not make a lot of written notes regarding the extent of the water damage he observed, he testified that after a fire is extinguished upstairs typically water will be dripping from light fixtures. In addition, he

noted that firefighters used tarps to cover furniture in the living room, which they would typically only do to limit the water damage caused by water dripping from the fixtures.

When Heritage's lead estimator, Danny Anderton, first entered the home the day after the fire, he observed that although the water had not actually dissolved the drywall, there was water damage everywhere and water was still dripping from the ceilings. He testified that based upon his experience repairing fire-damaged houses for thirty-five years, he was certain there was water in the walls behind the drywall. He opined that the downstairs walls would need to be gutted by stripping the drywall down to the studs due to smoke, water and debris going down into the walls. Mr. Anderton testified that mitigation work, such as bringing in large fans to attempt to dry out the house, would not have saved the downstairs drywall.[10] Because the downstairs required gutting, Heritage did not bring in large fans or other drying equipment.

Kevin Godfrey, the owner of Heritage and 1-800-BoardUp, also entered the home the first or second day after the fire. He testified that there was water damage throughout the house, and the downstairs carpet was soaked, some of the light fixtures were filled up with water, and water was dripping through various parts of the ceiling. Due to the extent of the dripping water, Mr. Godfrey returned to his car to put on taller boots and grab a rain shed jacket. He also opined that the entire house, including the first floor, needed to be gutted because the water damage was so severe the drywall on the first floor could not be saved. He testified that 1-800-BoardUp did some work securing the home the day of the fire, as well as packing out some contents. However, Heritage did not perform what he considers mitigation

[10] Mr. Anderton also testified that Heritage does not bring in drying equipment and fans unless a contract is signed and Heritage knows who the insurance company is, and in this case Gary Taladay did not know the identity of the insurance company and could not afford to pay for mitigation work on his own.

work, i.e. run fans or equipment, because running equipment was not practical in light of the water in the walls, ceiling, first floor ceiling joists, and other cavities.

Restoration estimator Tom Gibbons from Tersuli Construction was retained by MetLife to estimate the cost of repairing the fire damage to the Taladays' home. His first estimate for the cost of repairs, prepared in July 2015, also included gutting the entire house. He testified that the first floor of the house had a lot of delamination, such as cracking and peeling of panels, likely related to water damage and water sitting in the walls. He also testified that smoke could have gotten into the walls through the ductwork. Mr. Gibbons testified that it is hard to say whether mitigation work would have saved anything, and he would not disagree if another restoration contractor, who visited the site within a few days of the fire, concluded that gutting the entire house was necessary.[11] Finally, Mr. Gibbons acknowledged that his original estimate of both the cost and scope of repairs for the house were quite close to Mr. Anderton's estimate for Heritage, and both estimates involved gutting the entire house. *Compare* Ex. 70 (Mr. Anderton's $130,086 estimate for repairs) with Ex. 81 (Mr. Gibbons' $122,528 original estimate for repairs).

Finally, the MetLife adjustor who managed the majority of plaintiffs' claim, Tim Berglund, initially testified that he did not believe that the Taladays should have done anything more to mitigate the damage to the home after the fire. He testified that he did not have "any criticism" of what the Taladays did to protect the property from further damage after the fire, or of their decision to retain Heritage for assistance after the fire. Mr. Berglund did not

[11] When Mr. Gibbons was recalled to testify during MetLife's case, Mr. Gibbons retreated from his prior testimony. However, the Court does not find Mr. Gibbons' subsequent testimony fully credible, especially in light of his trial demeanor and his acknowledgment that MetLife is a frequent client. His initial testimony on direct examination appeared direct and forthright.

personally inspect the property until it had been sitting vacant for nearly a year, and he commented that it was "a little hard to be critical of" the Taladays at that point in time.

Thus, there was substantial – and consistent – evidence at trial supporting plaintiffs' claim that the first floor of the house suffered severe water damage after the fire. Significantly, the testimony of Chief Adams, Mr. Anderton, and Mr. Gibbons all indicate that the water damage directly resulted from the fire suppression efforts, because water used to extinguish the fire in the attic was dripping from light fixtures in the ceiling and likely running into the walls. Because the water damage to the first floor of the home constituted "direct loss that ensues after water damage . . . caused by fire," it was a covered cause of loss under the policy. Ex. 21 at MET000852.

Witnesses from Heritage, and even initially MetLife's adjustor Tim Berglund, also agreed that mitigation work such as bringing in large fans or other drying equipment would not have improved the condition of the first floor of the home to such an extent as to prevent it from needing to be gutted. Indeed, MetLife's adjustor had "no criticism" of the plaintiffs' mitigation efforts. Accordingly, the Taladays did not breach their contractual obligation to mitigate the loss after the fire by failing "to use all reasonable means to save and preserve property at and after the time of a loss, or when property is endangered by a peril insured against." Ex. 21 at MET000853. MetLife's mitigation defense is not supported by the evidence at trial.

D. MetLife Unreasonably Failed to Advise Plaintiffs that its Initial Coverage Investigation Concluded by September 2014, and Forced Plaintiffs to File this Action to Preserve Their Rights Under the Policy

After MetLife received notice of the fire on May 30, 2014 from Dimont, the first MetLife adjustor assigned to the Taladays' claim, Seth Alexander, spoke with Heritage's Kevin Godfrey by telephone on June 3, 2014 and inspected the house on June 5, 2014.

Dkt. 117 at 4. He also sent plaintiffs a June 4, 2014 letter acknowledging receipt of their claim and identifying their policy limits, as well as a Reservation of Rights Letter. Exs. 6-7.[12] The Reservation of Rights letter provided that "We need to inform you about a potential coverage problem for your recent claim with us," and cited plaintiffs' (1) failure to immediately report the loss and (2) failure to make reasonable and necessary repairs to protect the house from further damage as reasons why MetLife may not have any obligation to provide coverage under the policy. Ex. 6. MetLife then reassigned the claim from Mr. Alexander to Mr. Berglund, who inspected the house on June 9 and 10, 2014. *Id.* at 5.[13]

MetLife assigned Special Investigations Unit ("SIU") Investigator James Lindsay to investigate the reasons for the Taladays' late reporting of the fire. In addition, MetLife asked Mr. Lindsay to provide clarification as to the role and involvement of each of the Taladay brothers in the claim. Mr. Lindsay testified that he was not asked to investigate whether plaintiffs failed to mitigate the loss to the property by protecting it from further damage. SIU investigations are typically completed within thirty (30) days, if it is possible.

As part of his investigation, Mr. Lindsay met with Denny and Gary Taladay at the house on June 26, 2014. Ex. 97 at 25. As Mr. Lindsay had not yet learned that Gary Taladay was living in the home at the time of the fire, Mr. Lindsay advised Gary Taladay that he was unlikely to be reimbursed for his cost of living in a motel or other alternative living expenses ("ALE") because he was not a named insured on the policy. Although Mr. Lindsay asserts that

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[12] Relevant to this case, the first letter listed a "summary of your policy coverage" as follows: Dwelling $134,484, Private structures $26,897, Contents $94,139, and Loss of use $33,621.

[13] Mr. Berglund also sent Dimont a Reservation of Rights letter on June 10, 2014. *Id.* On July 11, 2014, Mr. Berglund sent Denny Taladay a letter with blank Proof of Loss forms with a request that he return the completed form within sixty (60) days. *Id.*

he did not make a definitive statement about coverage, he also told plaintiffs that their late reporting of the loss can affect whether their claim is covered. Mr. Lindsay also refused to speak with Mr. Anderton, the Taladays' contractor from Heritage, because he felt that Mr. Anderton was not entitled to have information about the policy as Mr. Anderton was not involved in the claim. Gary and Denny Taladay both testified that Mr. Lindsay told them during their meeting at the house that their claim was likely not covered due to the late reporting, and that MetLife would not reimburse Gary Taladay's ALE.

Meanwhile, MetLife had an obligation under WAC 284-30-380(5) to send plaintiffs written notice of the approaching one-year lawsuit deadline. Such written notice should have been sent directly to the Taladays thirty (30) days before the deadline passed – or no later than June 24, 2014 - because they had not yet retained legal counsel.[14] Mr. Berglund conceded at trial that no such notice was sent to the Taladays in this case. Once plaintiffs' counsel had been retained, he wrote to Mr. Lindsay on July 11, 2014, pointing out that the July 24, 2013 one-year suit limitation in the insurance policy was fast approaching, and asking for an extension of the deadline to file a lawsuit while MetLife continued its coverage investigation. Ex. 133. After receiving no response from Mr. Lindsay, plaintiffs' counsel then spoke to Mr. Berglund's claim supervisor, Dan Reist, on July 15, 2014, and repeated his request. Mr. Reist denied plaintiffs' request for an extension, although MetLife routinely grants such extensions of the suit limitation period where coverage investigations are ongoing or claims are still being adjusted. Plaintiffs' counsel then advised MetLife in writing that plaintiffs "will have no

[14] Specifically, WAC 284-30-380(5) provides that "[i]nsurers must not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney . . . without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. This notice must be given to first party claimants thirty days . . . before the date on which any time limit may expire."

choice but to file a lawsuit to preserve their rights." Ex. 134. Plaintiffs then filed their complaint in King County Superior Court on July 17, 2014. Ex. 135.[15]

On September 11, 2014, Mr. Lindsay concluded his investigation. He wrote in MetLife's claim notes that "this investigation is now complete. Based on the facts and circumstances developed during this investigation, I am recommending a routine handling of the claim." Ex. 28. However, the fact that Mr. Lindsay had concluded that plaintiffs' claim should be covered under the policy was never shared with the Taladays, who believed that MetLife's coverage investigation was still ongoing. Even when plaintiffs' counsel asked for a status update regarding the coverage investigation, Mr. Berglund failed to appraise him that MetLife would adjust the claim as a covered loss.

On September 26, 2014, plaintiffs' counsel asked Mr. Berglund "if there is anything more you need from the Taladays" and for an update regarding "the status of your investigation and when you expect to make a decision." Ex. 29. Instead of taking that opportunity to advise plaintiffs that MetLife would adjust the claim as a covered loss, Mr. Berglund simply requested "a properly completed proof of loss, which includes a completed content inventory list." Ex. 30. Although this request by MetLife, without more, was reasonable, Mr. Berglund took the unreasonable position that MetLife's adjustment of the structure loss (and apparently all aspects of the claim) would be contingent upon plaintiffs preparing an inventory of lost personal property without knowing whether any aspect of their claim would be covered by MetLife.

Plaintiffs' counsel responded to Mr. Berglund that his clients were unable to afford to hire a professional inventory company to list and appraise all the damaged items until they

[15] On August 20, 2014, MetLife removed the matter to this Court. Dkt. 1. On April 29, 2015, plaintiffs filed the instant Amended Complaint. Dkt. 29, Ex. 1 at 3-4.

knew whether MetLife was going to treat this as a covered loss. Ex. 30. On October 14, 2014, Mr. Berglund told plaintiffs' counsel that "MetLife's investigation of this loss is continuing. Our coverage determination will be based upon a full and complete investigation of the claim, which includes our review of your client's inventory of damaged or destroyed items." Ex. 32.

On December 4, 2014, plaintiffs' counsel sought clarification of Mr. Berglund's letter with respect to coverage for the structure damage to the Taladay residence, pointing out that "Mr. Berglund's October 14 letter appears to state that MetLife will not make a coverage decision concerning *the structure damage* and personal property until after my clients provide a list of the hundreds of damaged items in the house. This makes no sense to me. How does the contents list have any bearing on MetLife's decision on whether there is coverage for the fire damage?" Ex. 33.[16] When plaintiffs' counsel received no response to his letter from MetLife, he asked MetLife again to explain its coverage position. Ex. 34.

When defense counsel finally responded to plaintiffs' letter on MetLife's behalf on December 19, 2014, he advised plaintiffs *for the first time* that MetLife was adjusting the claim as a covered loss, stating that "MetLife continues to adjust this claim as a covered loss. However, the continued *adjustment of your client's claim is contingent upon your client's willingness to present an inventory of lost or damaged items*." Ex. 35 (emphasis added).[17] Similarly, contrary to the testimony of Mr. Berglund's supervisor, Dan Reist, that MetLife "never had a question whether we were covering the claim," MetLife's response to plaintiffs'

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[16] Plaintiffs' counsel then asked if MetLife would agree to pay for the cost of a professional to assist with the preparation of the inventory list, as plaintiffs could not afford to hire such a professional if MetLife decided not to pay them for the damaged items.

[17] MetLife also denied plaintiffs' request that MetLife agree to pay the cost of hiring a professional to prepare an inventory of lost or damaged items, as this is not a supplemental coverage under their policy. The Court is not aware of any authority, and plaintiffs have cited none, holding that MetLife's refusal to pay for a professional to inventory plaintiffs' personal property was unlawful.

first interrogatories as late as December 22, 2014 provided that "no coverage determination has been made at this time." Ex. 36. On January 12, 2015, plaintiffs filed a Insurance Fair Conduct Act Notification with the Office of the Insurance Commissioner, giving MetLife notice that plaintiffs believed their rights under IFCA had been violated by MetLife's conduct by "fail[ing] to pay any money for the damage to the Taladays' house, the items damaged by the house fire, or the cost of living in a motel." Ex. 37.

As noted above, WAC 284-30-330 defines nineteen "specific unfair claims settlement practices." Relevant to MetLife's conduct at the outset of this action, WAC 284-30-330(1) prohibits an insurer from "misrepresenting pertinent facts or insurance policy provisions." MetLife misrepresented the fact that MetLife's initial coverage investigation was ongoing when it fact it was apparently completed by September 11, 2014, within thirty days of when Mr. Lindsay began his investigation.[18] If plaintiffs were advised of this fact, they could have felt confident that large expenditures (such as the cost of hiring a professional to assist them in inventorying the unsalvageable contents of the home) were necessary and justified to present their claim. Plaintiffs testified that in the months following the fire, they were both unemployed and any fees incurred hiring a professional to assist them in presenting their claim would be an extreme financial hardship. The knowledge that MetLife would ultimately reimburse them for covered personal property would have assisted them a great deal in promptly presenting their claim for damaged personal property.

[18] Indeed, the Court's March 25, 2015 Order granting plaintiffs' motion for partial summary judgment on the narrow issue of whether the accidental fire was a covered cause of loss under the MetLife contract observed, in part, that "[a]lthough MetLife argues that its investigation of the insurance claim is not yet complete, MetLife has not identified any specific evidence that it is seeking that would establish a sufficient basis for denying coverage. Nor has MetLife presented any authority for the proposition that this Court should delay ruling until after MetLife decides that its claim investigation is complete." Dkt. 28 at 4.

In addition, MetLife repeatedly misrepresented to the plaintiffs that the adjustment of their entire claim, including structure damage and ALE, was contingent upon presentation of a complete inventory of damaged personal property. However, substantial evidence at trial, including the testimony of Mr. Berglund, established that this was not the case. Numerous witnesses from MetLife conceded that MetLife was able to adjust the structure portion of the claim and ALE regardless of whether the company had received an inventory of damaged personal property. Similarly, Mr. Berglund testified that MetLife did not need a fully completed Proof of Loss form from the Taladays in order to adjust the structure claim.

WAC 284-30-330(7) prohibits "compelling a first party claimant to initiate or submit to litigation . . . to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in such actions or proceedings." No money was offered to the Taladays, in the form of ALE or otherwise, prior to the lawsuit deadline. This may have been understandable in light of the fact that the one-year lawsuit deadline followed closely on the heels of the time when MetLife first received notice of the claim. It is troubling, however, in light of the fact that an extension of time was requested to avoid filing a lawsuit, and that MetLife often grants such requested extensions. Mr. Berglund's manager, Dan Reist, testified that claims involving fire damaged houses frequently last more than twelve (12) months and depending upon where MetLife is in the adjustment process, the company will grant extensions of the one-year deadline. Mr. Reist testified that MetLife "never had a question whether we were covering the claim," despite MetLife's representations to the contrary. Mr. Berglund also testified that MetLife "always" assumed that plaintiffs' claim was covered. Nevertheless, MetLife misrepresented critical facts about coverage and the status of its investigation, and refused to extend the one-year suit limitation period. As a result, MetLife violated WAC 284-30-330(7) by compelling plaintiffs to initiate

this action to recover amounts due under the policy.

Finally, as discussed above, MetLife violated WAC 284-30-380(5) by failing to send plaintiffs advanced written notice of the approaching one-year lawsuit deadline. MetLife's witnesses conceded that the failure to do so violated the insurance regulations.

E. MetLife Adjusted the Structure Claim with Chase Bank and Excluded Plaintiffs

The insurance policy includes a Lender's Loss Payable endorsement, which is a Washington addendum to the insurance contract, that provides: "Loss or damage, if any, under this policy shall be payable first to the loss payee or mortgagee . . . and, second, to the insured, as their interests may appear. . ." Ex. 21 at MET000882. However, the policy, at H-1, also provides: "Our Settlement Options: **We** will adjust all losses with **you**." Ex. 21 at MET000859 (emphasis in original).

On May 30, 2014, mortgagee Chase Bank's agent, Dimont & Associates, first filed a Notice of Claim with MetLife regarding the fire damage at the Taladays' property. Ex. 5. After MetLife acknowledged receipt of Chase's claim, Dimont advised MetLife on June 9, 2014 that the home was involved in foreclosure proceedings. Ex. 8.[19] That letter also directed MetLife to direct "all correspondence . . . to this office and to the attention of Anna Guenther. Any and all payments should be made in the name of 'Dimont & Associates in trust for JP Morgan Chase N.A. (FHA) ISAOA ATIMA for the account of ESTATE OF ROSEMARIE K. TALADAY[.]'" Ex. 8.

A few days after Mr. Berglund had taken over as adjustor of plaintiffs' claim on June 6, 2014, he noted in his claim notes on June 10, 2014 that he "spoke with Anna Guenther, with

[19] Specifically, Dimont warned MetLife "that this property may sell to a third-party and [be] made unavailable at any time. As such, [MetLife] may lose its opportunity to inspect, which may have a serious affect on [MetLife's] ability to accurately compensate our client for the loss it has suffered under the policy of insurance." Ex. 8.

Dimont and Associates today. Anne (sic) informed me the home went into default as of April 2014. Their records show an attempt to have a son added to the account as early as 7/29/13." Ex. 9. He further noted that "Chase Bank received the notice of death certificate on 9/11/13. It was not until 6/2/14, did they note authorization to speak with the executive of the estate. The outstanding loan balance is $86,987.65." Ex. 9. Mr. Berglund then sent Dimont a Reservation of Rights letter, nearly identical to the one sent to plaintiffs, and also requested substantial documentation related to the claim. Ex. 10.

On June 20, 2014, Dimont responded to MetLife's June 10, 2014 Reservation of Rights letter and request for documentation, stating that "as we advised, due to the family's active involvement in this claim, the mortgage company has been alerted and *will monitor internally until MetLife determines coverage for the named insured.* Chase's interests under the policy should still be held if any payments were issued to the named insured family, and if denial is issued to the family, Chase would then be able to reestablish direct contact with MetLife to resolve claim." Ex. 15 (emphasis added). Dimont then reiterated, "If MetLife has denied coverage to the named insured family please advise, *otherwise Chase will monitor internally for conclusion and resolution of claim via the claim the family presented.*" Ex. 15 (emphasis added).

Despite Dimont's directive that MetLife should complete its adjustment of the claim "via the claim the family presented," MetLife proceeded to adjust the structure claim directly with Chase Bank, excluding plaintiffs and their attorney from the process entirely. As noted above, MetLife's contemporaneous communications with plaintiffs' counsel had indicated that adjustment of the structure claim was contingent upon plaintiffs' submission of an inventory of damaged personal property. Exs. 30, 32, 33, 34, 35. On the same day that plaintiffs filed their first motion for summary judgment asking the Court to confirm that the fire was a covered

cause of loss under the policy, Dkt. 14, MetLife contacted Chase Bank's representatives in an effort to calculate an actual cash value payment for the structure worth less than half of plaintiffs' coverage amount for the dwelling under the policy. Specifically, on February 19, 2015, defense counsel contacted Dimont "about the status of Chase's interest in the property." Ex. 42.[20] Mr. Berglund, as well as MetLife representative James Nickle, testified that MetLife's delayed payment for the structure damage was caused by Chase being less than forthcoming with the payoff information. This, however, was not true. Contrary to Mr. Nickle's testimony, MetLife received the payoff quote from Dimont on March 3, 2015. Ex. 46 (email to Mr. Berglund with "the payoff you requested"); *see also* Ex. 157 (payoff quote generated Tuesday, March 3, 2015 for $89,526.56). On March 4, 2015, Dimont also sent defense counsel payment instructions. Ex. 47.[21] Plaintiffs were not apprised of any of these communications, even when plaintiffs' counsel specifically asked MetLife to include the Taladays as payees on the check.

On April 1, 2015, counsel for MetLife wrote to plaintiff's counsel, stating: "You stated to the court that should the court rule in your favor, your clients could then afford to hire Heritage Restoration *to evaluate the damage to the home* and create an inventory of personal property." Ex. 57 (emphasis added). Plaintiff's counsel promptly responded that Heritage "is starting the process of evaluating the *cost of repairing the structure damage* and generating an

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[20] A few days later, defense counsel asked plaintiffs' counsel to withdraw their pending motion for partial summary judgment because "MetLife has never disputed that this loss was caused by fire, or that the accidental fire is a covered peril under the policy" and suggesting that the plaintiffs "continue to refuse to cooperate under the terms and conditions of the policy." Ex. 43. However, when plaintiffs' counsel asked if MetLife's concession that the accidental fire damage was covered "mean[s] that MetLife now agrees to pay for the fire damage and the cost of Gary Taladay staying at a motel," Ex. 44, his question went unanswered by MetLife. The Court granted plaintiffs' motion on March 25, 2015. Dkt. 28.

[21] Several emails from Dimont to defense counsel followed, asking whether MetLife had received the payoff amount and payment for the structure had been mailed to Dimont yet. Exs. 48, 53.

inventory of the contents damage. We will provide you with their estimate once we receive them (sic)." Ex. 58. In addition, counsel stated that "I understand MetLife believes the insurance contract allows it to adjust the structure loss with Chase without including the Taladays as payee. I believe this is contrary to Washington law. Please be advised that the Estate of Rosemary Taladay should be included as a payee on all checks issued for the structure....If you disagree with our position concerning the loss payee, please let me know so that we can seek resolution of this issue." Ex. 58. However, MetLife did not respond to this email and instead continued to adjust the structure loss directly with Dimont.

The day after Mr. Berglund received an April 16, 2015 email from Dimont asking whether Dimont was going to be receiving a check, Mr. Berglund sent Dimont a cover letter, a copy of an estimate for the structure damage, and a check for the sum of $51,050.82 as the actual cash value for the structure loss. Ex. 59 (April 16, 2016 email from Dimont to Berglund); Ex. 61 (check for $51,050.82).[22] Mr. Berglund did not advise plaintiffs that MetLife had made payment to Dimont for the structure damage, although that payment was to be held in trust for plaintiffs to make repairs to the property.

On April 29, 2015, plaintiffs' counsel wrote to defense counsel asking for a response to his April 2, 2015 letter regarding adjusting the loss with the bank without involving the Taladays, and advising MetLife that plaintiffs feel they have "no choice but to seek assistance

[22] Mr. Berglund's cover letter asserted that if the property was repaired, and if the bank retained an insurable interest in the property, then MetLife would send up to an additional $9,860.79, representing the actual cost to repair or replace the damaged property. Ex. 60. The letter also directed Dimont to "provide a copy of this estimate to the contractor of your choice. If the contractor should find this estimate insufficient, please send us your contractor's detailed estimate for our review and approval of any supplement prior to the beginning of repairs." Ex. 60.

from the Court." Ex. 62.[23] Only in response to that letter did defense counsel advise plaintiffs' counsel for the first time that MetLife had already issued the $51,050.82 payment to Chase Bank. Ex. 64 (defense counsel's April 29, 2015 email); *see also* Ex. 65 (plaintiffs' counsel responding that the check to Chase Bank should have included the Taladays' estate as a payee, and defense counsel confirming that it did not).

Plaintiffs' counsel e-mailed Mr. Berglund and defense counsel on May 28, 2015, and attached Heritage estimator Danny Anderton's $130,086 estimate for the cost of repairing the house. Ex. 69, 70.[24] Plaintiffs' counsel asked if MetLife "will authorize the Taladays and/or Chase to repair the house using the amount estimated in Mr. Anderton's estimates. Also, please let me know if MetLife will revise its ACV payment and base it on Mr. Anderton's estimates." Ex. 69. Plaintiffs' counsel also reminded MetLife that the foreclosure sale is set for June 26, 2015, and therefore "if MetLife disputes Mr. Anderton's estimates, we need to move quickly to resolve any dispute." Ex. 69.

Tersuli Construction Services estimator Tom Gibbons was then retained by MetLife to prepare an estimate of the cost of repairing the fire damage to the home in June or July 2015. His original estimate included "gutting" the entire house, and totaled $122,528.48. Ex. 81 at

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[23] Plaintiffs previously submitted evidence in this case showing that plaintiff followed up his April 2, 2015 letter to MetLife with several emails, which all went unanswered by MetLife, requesting a response and asking if MetLife was going to pay the bills that had been provided. These communications, however, are not trial exhibits.

[24] Mr. Anderton provided three estimates which include pricing for July 2013, July 2014, and "today's pricing April 2015." Ex. 69. Mr. Hanson promptly forwarded Mr. Anderton's email with attachments to MetLife. Although Mr. Anderton's estimate is dated July 24, 2013, Mr. Anderton testified that this date was an error and he likely started to prepare the estimates earlier in May 2015 and completed them on May 28, 2015, shortly before sending them to plaintiffs' counsel.

26-27.[25] Mr. Gibbons testified that he prepared his estimate in the same way as he would for any ordinary fire insurance claim, by including all damage that appeared related to the fire.

Upon receipt of Mr. Gibbons' estimate, which plaintiffs' counsel observed was very close to Mr. Anderton's $130,086 estimate, plaintiffs asked MetLife to "please calculate the actual cash value (ACV) for the cost of repairs based on that estimate and reissue payment to the Taladays accordingly. Please also confirm that the Taladays are authorized by MetLife to spend up to $122,528 for the cost of repairs . . . If MetLife does not agree to these requests, please explain why." Ex. 82. Mr. Berglund did not respond to plaintiffs' letter, although he conceded that he should have done so under Washington law. He further conceded that he did not communicate with the Taladays at all concerning the structure claim, because MetLife was strictly trying to communicate with the lender about the damages and "the amount that we were trying to pay."[26] Although Mr. Berglund acknowledged that the insurance contract required MetLife to adjust the structure claim with the Taladays, he and Mr. Reist testified that they thought this case was unique due to the fact that the house was in pre-foreclosure.

As Mr. Berglund conceded at trial, MetLife's exclusive adjustment of the structure portion of the claim with Chase Bank violated the insurance contract, which required MetLife to "adjust all losses with [the insured]." Ex. 21 at MET000859. The fact that Chase Bank, as mortgagee, was entitled to receipt of the insurance proceeds up the mortgage payoff amount under the Lender's Loss Payable endorsement did not justify MetLife's decision to exclude

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[25] Mr. Gibbons' estimate was apparently not provided to plaintiffs' counsel by MetLife until July 9, 2015. Ex. 82. Although the estimate contains different dates, Mr. Gibbons testified that it was completed around July 1, 2015.

[26] Similarly, Mr. Berglund's supervisor Dan Reist testified that MetLife was adjusting the claim with Chase Bank.

plaintiffs entirely from the process.[27] Indeed, by doing so, MetLife rendered plaintiffs largely unable to protect their interest in making repairs to the home – which is their right under the contract. MetLife's behavior also suggested a keen awareness, on its part, that it would be far less expensive for MetLife to negotiate a low actual cash value payment to Chase Bank, rather than involve the plaintiffs and increase the likelihood that MetLife would need to pay for the full cost of repairs.[28]

MetLife's failure to communicate with the Taladays regarding the structure claim, despite repeated inquiries from plaintiffs' counsel regarding coverage, also violated WAC 284-30-360(3). That provision provides that it is an unfair act for an insurer to fail to provide "an appropriate reply . . . within ten working days" to "all other pertinent communications from a claimant reasonably suggesting that a response is expected[.]" Mr. Berglund violated this provision on numerous occasions with respect to plaintiffs' inquiries regarding the structure claim, such as his failure to respond to plaintiffs' counsel's inquiries regarding whether MetLife would authorize payment based upon repair estimates generated by Mr. Anderton or Mr. Gibbons.

F. MetLife Unreasonably Modified Mr. Gibbons' Estimate By Excluding Repairs Related to "Gutting" the First Floor of the House

Mr. Berglund initially testified that he did not "deny coverage" for the water damage that had occurred to the first floor of the house. Rather, he reduced Mr. Gibbons' original $122,528 estimate to $75,719 because the Taladays' insurance policy did not afford coverage

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[27] The Court finds that this conduct also violated WAC 284-30-330(13), which provides that it is an unfair act for an insurer to "fail[] to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or the offer of a compromise settlement."

[28] MetLife's $52,000 actual cash value payment to Chase bank was substantially less than the $122,000-$130,000 estimates for repairs that MetLife received from the two estimators who evaluated the fire damage.

for "code upgrades." *Compare* Ex. 81 (Mr. Gibbons' original $122,528 estimate) *with* Ex. 184 (Mr. Gibbons' final $75,719 estimate). This explanation was not credible, as both Mr. Anderton and Mr. Gibbons testified that code upgrades would have likely cost around $5,000. Thus, the fact that the Taladays' policy did not afford approximately $5,000 in code upgrade coverage does not account for the nearly $50,000 reduction Mr. Berglund made to Mr. Gibbons' estimate. Mr. Gibbons testified that Mr. Berglund directed him to make specific changes to the estimate based upon "his [Mr. Berglund's] opinion," even though both contractors who provided Mr. Berglund with estimates for repairs (Mr. Anderton and Mr. Gibbons) recommended gutting the first floor of the house.

Mr. Berglund subsequently testified that he modified Mr. Gibbons' estimate to remove any repairs related to "mold damage" because he believed any mold was subject to a $1,000 policy limit, if it resulted from a covered cause of loss at all. He did not believe the mold directly resulted from the fire suppression efforts, but instead resulted from the home being vacant and without climate control for so long. Thus, he stated that either MetLife would pay for the mold and apply the $1,000 policy limit, or MetLife would not pay for any mold damage because it was not directly caused by the fire.[29] Mr. Berglund conceded that any water damage directly resulting from the fire suppression efforts is covered under the policy, but stated the mold in the home "indirectly" resulted from the fire in this case.

The Court finds Mr. Berglund acted unreasonably by modifying Mr. Gibbons' estimate to remove repairs related to gutting the first floor of the house. Mr. Berglund's suggestion that his changes to the original estimate simply reflected "mold damage" or "code upgrades" that

[29] Mr. Berglund did not advise the Taladays that they could make a secondary claim for the additional mold damage to the house because he did not believe the mold resulted from a covered cause of loss, and in any event, Mr. Berglund stated that he was not at the house to "investigate" the cause of the mold – only the fire.

were not afforded by the policy is not credible. As discussed above, there is substantial evidence that the first floor of the home suffered severe water damage as a result of the fire suppression efforts. Numerous witnesses, including the two experienced contractors who prepared the estimates for repairs, testified that the first floor of the home needed to be "gutted" due to the severe water damage that resulted from the fire. As Mr. Berglund testified, water damage resulting from the fire suppression efforts is covered under the policy. Mold and code upgrades do not account for the drastic changes Mr. Berglund made to Mr. Gibbons' original estimate.

Mr. Berglund's unreasonable adjustment of the estimate for repairs had catastrophic consequences for the Taladays in this case, because by greatly reducing the funds available for the Taladays to make necessary repairs to the structure, MetLife made it impossible for plaintiffs to find a contractor willing to complete the work. For example, Mr. Gibbons testified that if he cannot reach an agreement with an insurance company regarding the cost of necessary repairs and the homeowner cannot afford to pay on their own, he declines to undertake repairs on a fire-damaged property. Meanwhile, if no repairs are actually made to a property, MetLife is able to pay much less under the contract than they are obligated to pay if the home is repaired. Specifically, MetLife is only obligated to pay actual cash value (a depreciated amount) for the structure until repairs are actually untaken. Thus, although the $52,000 structure payment MetLife made to Chase Bank was being held in trust for the Taladays to make repairs to the property, it was an insufficient amount of money to make the necessary repairs to make the home habitable. Because plaintiffs were unable to afford repairs to the home, in the absence of sufficient insurance proceeds, the home was foreclosed upon by Chase Bank and sold at a Trustee's foreclosure sale on February 10, 2016 for $76,200. Ex.

99.[30]

As discussed above, MetLife argues that Mr. Berglund's actions were justified because plaintiffs violated the policy provision requiring them to protect the home against further damage after the fire. An insurance company asserting an affirmative defense bears the burden of proving the facts necessary to establish it, and failure to mitigate damage is an affirmative defense in the insurance context. *See Kanne v. Conn. General Life Ins. Co.*, 867 F.2d 489, 492 n.4 (9th Cir. 1988); *Trident Seafoods Corp. v. Commonwealth Ins. Co.*, 850 F.Supp.2d 1189, 1204-05 (W.D. Wash. 2012); *Ainsworth v. Progressive Cas. Ins. Co.*, 180 Wash.App. 52, 76 (2014). However, the Court finds that MetLife has not met its burden of establishing its mitigation defense. MetLife suggested that plaintiffs should have insisted that Heritage undertake the effort and expense of bringing in fans and other drying equipment immediately after the fire to minimize water damage to the first floor of the house, because such mitigation efforts were contemplated by the Emergency Services contract Gary Taladay signed with Heritage immediately after the fire. However, several witnesses testified that the "damage was done" and additional mitigation efforts would not have saved the first floor of the home from needing to be gutted. Even Mr. Berglund initially testified that he had "no criticism" of the steps plaintiffs took to mitigate the loss following the fire. Thus, Mr. Berglund's adjustment of Mr. Gibbons' original estimate is also not justified by plaintiffs' alleged failure to adequately mitigate the water damage.

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[30] It appears that the amount due on the loan was $96,662.00, which presumably includes additional late fees and foreclosure expenses. Ex. 99. The March 15, 2015 payoff quote for the mortgage from Dimont was $89,526. There was no evidence introduced at trial regarding whether the Taladays received any surplus from the sale, although receipt was acknowledged during closing arguments, and Chase bank had already been paid approximately $52,000 actual cash value for the home. Ex. 60.

Finally, the Court finds that not only did MetLife wrongfully deny coverage for repairs to the first floor of the house, but this denial of coverage was never communicated to the Taladays. This conduct violated WAC 284-30-380(1-3), which provides that an "insurer must not deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to the specific provision, condition, or exclusion is included in the denial," which must be "given to the claimant in writing[.]"

G. MetLife Failed to Render "Reasonable Assistance" to Gary Taladay in Obtaining Loss of Use Payments Owed Under the Policy

Gary Taladay was an insured who was displaced by the fire, and therefore MetLife was obligated to pay, at his choice, fair rental value ("FRV") payments or reimbursement of his additional living expenses ("ALE") under the policy. Ex. 21 at Met000845. Mr. Berglund testified at trial that ALE payments are typically greater than FRV, because ALE includes costs like on-site laundry, parking, gas, food costs for dining out, as well as the cost of staying in a hotel. The insureds are required to save their receipts and produce them for reimbursement. FRV is the cost of renting a similar sized home in the area. Mr. Berglund acknowledged that in this case, however, FRV of the Taladay home was higher than Gary Taladay's ALE, because the Western Inn cost less than $1,000 per month.

Mr. Berglund testified that he most likely had a conversation with Gary Taladay about the difference between ALE and FRV because it is his practice to discuss "the options" with the insured. Mr. Berglund believes this conversation took place when he first met with Gary at the house because his claim notes reflect the price of Gary Taladay's hotel, but no other notes regarding their conversation about loss of use benefits. *See* Ex. 97 at MET000022 (noting that "Gary had been living in the hotel since the fire at a rate of $998 a month."). However, Mr. Berglund concedes that he did not actually calculate the FRV of the Taladay home until

months later, although he acknowledged that such information would have helped inform Gary Taladay's choice between FRV and ALE. Mr. Berglund testified that it is now his practice to send out a letter giving the insured the option to elect ALE or FRV, although he did not send out such a letter at the time of his meeting with Gary Taladay.

Finally, Mr. Berglund testified that he did not send Gary Taladay a written request for receipts or ask plaintiffs' counsel to obtain hotel receipts, and he could not recall whether he verbally told Gary Taladay that he would need to submit hotel receipts before MetLife could reimburse him for ALE. However, Mr. Berglund asserts that it was Gary Taladay's responsibility, if he wanted his ALE to be reimbursed, to submit receipts to MetLife and ask to be reimbursed for his living expenses.

At trial, plaintiffs testified that Mr. Berglund did not advise Gary Taladay of his right to choose either ALE or FRV under the policy, or instruct him to submit his hotel receipts to MetLife. In addition, plaintiffs testified that Mr. Lindsay had already told them Gary Taladay would not be entitled to reimbursement for ALE under the policy, and so Gary Taladay was still unsure of whether he would be reimbursed for his living expenses.

MetLife only offered Mr. Taladay loss of use payments after this Court became involved. Specifically, on March 25, 2015, the Court granted plaintiffs' motion for partial summary judgment confirming that the damage to the late Ms. Taladay's residence resulting from the accidental fire was a covered cause of loss under her insurance policy. Dkt. 28. On April 2, 2015, plaintiffs submitted two receipts from Gary Taladay's motel, the Western Inn, for reimbursement by MetLife. Ex. 58.[31] Heritage also submitted invoices to MetLife on March 3, 2015, requesting payment for emergency services rendered. Dkt. 117 at 5.

[31] Notably, the first Western Inn bill shows a printing date of July 10, 2014, approximately eight months before receipts were submitted to MetLife and within days of the

On May 18, 2015, MetLife sent letters stating that they were paying Heritage $6,047.40 and Gary Taladay $9,460 for four months of loss of use of the home (FRV). Ex. 173.[32] However, when those payments were never received by plaintiffs, the Court ordered MetLife to promptly re-issue the checks. Dkt. 44. Mr. Berglund testified that MetLife did not issue the loss of use payments earlier than May 2015 because the onus is on the plaintiffs to send MetLife the receipts for reimbursement, and those receipts were not provided by the Taladays. Once he finally received the hotel receipts from Gary Taladay, Mr. Berglund obtained a FRV computation of the Taladay home from a company called ALE Solutions, and paid that amount because it was a greater sum than ALE would have been. Ex. 172 (ALE Solutions estimate dated May 15, 2015); Ex. 176 (check for $9,460 dated Mary 18, 2015).

Plaintiffs then moved the Court to award an additional $24,161 for Gary Taladay's loss of use of the home following the fire pursuant to the Loss of Use provision of the contract. Dkt. 56. By Order dated October 16, 2015, the Court granted plaintiffs' motion, and noted that MetLife failed to explain why it had only attempted to compensate Mr. Taladay for four months of Loss of Use coverage when its own expert, Mr. Gibbons, estimated that it would take a minimum of six months to repair the structure. Dkt. 66 at 6. Indeed, Mr. Gibbons testified at trial that it would probably take more like eight or nine months. Accordingly,

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initial complaint being filed in this case. Ex. 135. That invoice shows Gary Taladay's check in date as September 16, 2013 and a check out date of July 19, 2014. Ex. 169. The second invoice, printed on March 24, 2015, shows a check in date of March 15, 2015 and a check out date of April 14, 2015. Ex. 169. MetLife did not receive any receipts for the time period between these two invoices, or receipts for any of Gary Taladay's other living expenses.

[32] MetLife provides a copy of the May 18, 2015 check and envelope bearing the U.S. Post Office stamp "Return to Sender, Not Deliverable as Addressed," presumably to show that payment was promptly issued by MetLife to the correct address (something defense counsel argued stridently during a status hearing on the issue). However, MetLife has inexplicably redacted the mailing address on the envelope, rendering it impossible to determine how MetLife actually addressed the original check. Ex. 176.

pursuant to this Court's two Orders, MetLife paid plaintiffs the policy limit ($33,621) for loss of use coverage under the policy in October 2015. Dkt. 66.

The Court did not find Mr. Berglund's testimony, that he offered Gary Taladay a choice between FRV and ALE, and explained the difference, to be credible. As a result, MetLife violated WAC 284-30-350(1) by "fail[ing] to fully disclose to first party claimants all pertinent benefits, coverages or other provisions" of the policy. Even if Mr. Berglund had offered Gary Taladay a choice between FRV and ALE during their first meeting, such a choice was illusory in light of the fact that Mr. Berglund had not yet obtained the estimated FRV for the home. Mr. Taladay did not have the ability to calculate FRV himself, and so Mr. Berglund undoubtedly did not provide sufficient information for Gary Taladay to make an informed choice. This is evidenced by the fact that, even after Gary explicitly requested ALE payments and submitted hotel receipts, Mr. Berglund discovered that FRV was a substantially larger sum. The Court is also deeply troubled by the fact that Mr. Berglund conceded that he did not advise Gary Taladay that he needed to submit receipts for any living expenses for reimbursement.[33] Gary Taladay has a very limited education, and clearly experiences chronic pain from a medical condition. It is difficult to imagine an insurance adjustor meeting with him and discussing loss of use benefits, and somehow failing to explain what steps must be taken to submit a claim to MetLife. This does not constitute "reasonable assistance" under WAC 284-30-360(4).[34]

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[33] In light of Mr. Berglund's conduct throughout this case, the Court also finds Mr. Berglund's testimony that he paid FRV instead of ALE because "it allowed him to pay more money" to be less than fully credible.

[34] WAC 284-30-360(4) provides that an insurer must "promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements."

MetLife is not solely responsible for the substantial delay in loss of use payments in this case, however. Gary Taladay's first Western Inn bill shows a printing date of July 10, 2014, approximately eight months before the receipts were submitted to MetLife and within days of the initial complaint being filed in this case. Ex. 135. At the time when those receipts were printed, plaintiffs were already represented by their counsel, who is experienced enough to know that MetLife is not going to issue ALE payments without receipts. Plaintiffs have not provided any satisfactory explanation for the eight-month delay in furnishing those receipts to MetLife. Moreover, plaintiffs failed to produce an invoice for Gary Taladay's hotel stay between July 19, 2014 and March 15, 2015, or any other receipts documenting his living expenses since the fire. As a result, MetLife's failure to actually issue any loss of use payments prior to receiving the hotel receipts from Gary Taladay in April 2015 was not unreasonable.

H. MetLife Unreasonably Delayed Payment for Damaged Contents

The most contentious dispute between the parties, until only a few weeks before trial, concerned plaintiffs' claim for reimbursement for their damaged personal property. The unpaid portion of the of $94,139 policy limit for personal property was paid by MetLife on February 16, 2016. Dkt. 117 at 6. As a result, the parties' only remaining dispute regarding the contents is whether MetLife's substantial delay in making that payment was reasonable.[35]

[35] MetLife introduced substantial evidence at trial that the billing practices of Heritage Restoration were unreliable, and Heritage may have billed MetLife for the same work on two separate occasions or otherwise inflated their invoices for emergency services, cleaning salvageable items, and storing contents removed from the home. Plaintiffs demonstrated that MetLife was mistaken, in some respects. For example, one of the allegedly duplicative invoices was actually an estimate that preceded the final bill, which is why it reflected the same work. In any event, the Court agrees with MetLife that Heritage's accounting practices are perplexing, to say the least. However, Heritage is not a party to this action, and whether Heritage's invoices are inflated is not material to the outcome of this action between plaintiffs and MetLife.

The second day that Mr. Berglund visited the Taladay residence, he created an inventory of approximately 140 items in the attic that he could tell were damaged by the fire.[36] Mr. Berglund testified that one of the ways MetLife provides "reasonable assistance" to its customers is by helping the insured provide an inventory list of damaged items, which may involve the assigned MetLife adjustor partially generating such a list. Mr. Berglund testified that his *current* practice is to share his list of damaged items with his customers fairly promptly to help them provide their required list of contents. However, at the time Mr. Berglund was assigned to the plaintiffs' claim, he was not sharing his inventory list with the insured. Accordingly to Mr. Berglund, he withheld his partial inventory list from the plaintiffs because plaintiffs had not yet generated their own complete inventory list of damaged items.

Mr. Berglund used his partial inventory list to create a June 11, 2014 estimate for the cost of repairing the house and cleaning the contents. Ex. 13.[37] However, Mr. Berglund did not share his estimate with plaintiffs until March 2015, although he could not explain why he withheld that estimate for so long. Mr. Berglund later prepared a second estimate on March 16, 2015, and also did not share that estimate with the plaintiffs. Ex. 52.

Mr. Berglund testified that he wanted the Taladays to provide an estimate of the damage to their personal property by submitting a completed Proof of Loss form.[38] On July

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[36] He used a headset and LifeScribe with a company called Enservio to dictate a list of damaged contents. Enservio can price them and provide MetLife with a value for the items within a couple of days.

[37] Although Ex. 13 identifies Seth Alexander as the author, it was prepared by Mr. Berglund.

[38] As noted above, Mr. Berglund testified that the Proof of Loss form was not actually needed to adjust the plaintiffs' claim for structure damage, loss of use payments, or cost of cleaning the salvageable contents, although he never clarified this with the Taladays. For example, the form does not request any information regarding the loss of use coverage being requested by the insured. This fact is at odds with Mr. Berglund's prior representation in his declaration submitted to the Court in support of MetLife's summary judgment motion asserting that Gary Taladay "declined" to elect ALE or Fair Rental Value when he returned the form.

11, 2014, Mr. Berglund sent Denny Taladay the Proof of Loss form, and asked him to return it along with "all necessary documents in support of your claim" within sixty (60) days. Ex. 16. He also asked Denny Taladay to identify what items belong to Rosemarie Taladay, Gary Taladay, Bernard Taladay, and Bernard's girlfriend (another prior resident of the home). In addition to a few specific questions such as the date of the loss, the Proof of Loss form asked the Taladays to estimate the "actual cash value" of the property at the time of the loss, the "whole loss and damage (including any applicable sales tax)", and the total "amount claimed" under the policy. Ex. 16. For example, the form does not differentiate between personal property loss and structure damage.

The testimony at trial, even from MetLife's representatives, established that MetLife's Proof of Loss form is very poorly drafted and confusing. Mr. Berglund did not know how to fill out the Proof of Loss form, particularly Schedules A-C on the second page. For example, the Proof of Loss asks the insured to estimate "actual cash value" of the property at the time of the loss, but Mr. Berglund testified that he would not expect a homeowner to actually be able to calculate depreciation of their damaged property as that is part of his duties as adjuster. Similarly, MetLife does not send out instructions regarding how to complete Schedules A-C on the second page of the form, and Mr. Berglund did not know what should be written in those Schedules. The Proof of Loss form also includes a "release and authorization of payment" at the bottom, providing that "the repair or replacement of the loss and damage . . . has been made to [the homeowner's] entire satisfaction," and therefore MetLife's payment "shall constitute a full performance of the obligations of the insurer under its policy" and MetLife is released from any future liability. Ex. 16. Mr. Berglund conceded that MetLife should not ask homeowners to sign a release before they had received money and full repairs were completed.

Denny Taladay submitted a partially completed Proof of Loss form on September 3, 2014. Ex. 27. He filled out the entire form, including identifying who was living at the home at the time of the fire, the date of the loss, and who the mortgage company was. Ex. 27. However, in the sections of the form requesting estimates of "Actual Cash Value" of the property, "Whole Loss and Damage (including any applicable sales tax)", and "Amount Claimed under the . . . policy", he only wrote "unknown." Ex. 27. In light of Mr. Berglund's testimony that the form and accompanying instructions were so confusing that he did not personally know how to complete it, the Court finds that it was unreasonable for MetLife to use the fact that Denny Taladay wrote "unknown" on the form as an excuse not to adjust plaintiffs' claim. This is particularly true in light of Mr. Berglund's testimony that he does not assist his customers in completing the form, or provide any additional instructions on how to complete it, even if customers call him directly to request assistance.

As noted above, in late September 2014 plaintiffs' counsel asked if MetLife had made a coverage decision and if there was anything else MetLife needed from the Taladays. Ex. 29. Mr. Berglund requested a "properly completed proof of loss, which includes a completed inventory list." Ex. 30. Again, Mr. Berglund failed to advise plaintiffs at that time that his initial coverage investigation had concluded, and therefore the unsalvageable personal property damaged by the fire would be covered. Plaintiffs' counsel responded that his clients would need to hire a professional inventory company to list and appraise all the damaged items due to the large volume, but were unable to afford such a company until they knew MetLife's coverage decision. Ex. 30. On October 14, 2014, Mr. Berglund told plaintiffs' counsel that "Our coverage determination will be based upon a full and complete investigation of the claim, which includes our review of your client's inventory of damaged or destroyed items." Ex. 32. In early December 2014, plaintiffs' counsel again advised MetLife that plaintiffs needed to hire

a professional to assist with an inventory list, but could not afford to do so unless MetLife will pay them for the damaged items. Ex. 33. When MetLife finally responded to plaintiffs' letter, MetLife simply reiterated that "the continued adjustment of your client's claim is contingent upon your client's willingness to present an inventory of lost or damaged items." Ex. 35.

On May 18, 2015, MetLife issued its first partial payment of plaintiffs' contents claim in the form of a $6,047 payment directly to Heritage for the packing, handling, and repairs of the insured's contents. Ex. 67. On June 22, 2015, plaintiffs provided MetLife with the Taladay Total Loss Report (which identifies the unsalvageable personal property items) and the Taladay Presentation Report (which identifies cleanable items), but these reports failed to include the price and age of the items. Exs. 73-77. On September 28, 2015, plaintiffs provided MetLife with a complete inventory list generated by a different company, ICDR, Inc., which included the estimated age and price of plaintiffs' unsalvageable items. Ex. 85.[39]

After MetLife received several additional invoices from Heritage pertaining to cleaning, storage, and disposal of plaintiffs' contents, MetLife offered to issue the remaining payment on plaintiffs' contents claim on November 19, 2015. Ex. 93. On December 17, 2015, plaintiffs elected to have personal property owned by prior guests of the home covered by the policy, including Bernard and Denny Taladay.[40] On February 16, 2016, MetLife issued a check for the unpaid contents limits of $91,771, payable to The Estate of Rosemary Taladay, Bernard Taladay, Gary Taladay, and Denny Taladay.[41] Dkt. 95.

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[39] On October 7, 2015, plaintiffs and MetLife learned that Heritage had unfortunately disposed of all remaining contents in the house. Ex. 88.

[40] The Court authorized MetLife to issue the contents check payable to all the claimants jointly.

[41] This payment was based upon the stated policy limit of $94,139, increased to reflect inflation under the "Inflation Guard" coverage, less $5,047.40 paid to Heritage for cleaning and storage. Dkt. 117 at 6.

As MetLife has already issued the policy limits for lost contents, it is undisputed that no additional funds are owed to plaintiffs for their fire-damaged personal property. However, the Court finds that MetLife's delay in issuing payment until only a few weeks before trial was unreasonable.

Mr. Berglund's conduct with respect to the contents was unreasonable from the very outset of this action, when he concealed his partial inventory of personal property items from the plaintiffs – even after plaintiffs repeatedly advised him that they needed professional assistance to inventory and appraise the items but could not afford it. Plaintiffs' need for professional assistance to inventory and appraise the approximately 2,000 fire-damaged items is understandable, especially in light of Mr. Berglund's testimony that he personally wore a respirator while he was creating his inventory list due to the conditions inside the home. Mr. Berglund's supervisor, Dan Reist, testified that MetLife typically prepares lists of damaged items in the insured's homes and then shares a copy of that list with the homeowner for supplementation. This practice is part of the "reasonable assistance" MetLife provides to its customers.

Thus, MetLife failed to provide the Taladays with the "reasonable assistance" required by WAC 284-30-360(4)[42] when MetLife required plaintiffs to generate an inventory list (and arbitrarily made the adjustment of plaintiffs' entire claim contingent upon the production of such a list) while simultaneously withholding the Enservio list MetLife had already generated. Similarly, MetLife failed to provide "reasonable assistance" by failing to help plaintiffs complete the confusing Proof of Loss form, and unreasonably withholding Mr. Berglund's June 2014 and March 2015 estimates. Ex. 13, Ex. 52. Mr. Reist also testified that such

[42] WAC 284-30-360(4) provides that "every insurer must promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements."

estimates are typically shared with the insured, and he had mistakenly believed Mr. Berglund had shared them with plaintiffs in this case.

I. Metlife's Conduct Violated IFCA, the CPA, and Breached the Duty of Good Faith

MetLife's conduct in this case amounted to an unreasonable denial of a claim for coverage or payment of benefits to which plaintiffs were entitled under the policy. Plaintiffs have established that MetLife unreasonably denied plaintiffs' claim for coverage, and also violated numerous insurance regulations, including several provisions of WAC 284-30-330 and WAC 284-30-360.[43] RCW 48.30.015(1). As mentioned above, although MetLife never explicitly denied plaintiffs' requests for coverage, MetLife's unreasonable delay in payment and/or underpayment of various aspects of plaintiffs' claim violated IFCA. *See e.g., Morella*, 2013 WL 1562032, at *3; *Freeman*, 2012 WL 2891167, at *3.

MetLife's numerous violations of the WAC 284-30-330 and WAC 284-30-360 also constitute violations of the CPA, because a single violation of any of the WAC insurance regulations is an unfair or deceptive act or practice under the CPA. As discussed above, in Washington, to prove an insurer violated the CPA, the insured only has to show that the insurer breached one or more of the WAC regulations and that the insured was injured by that breach.[44] Plaintiffs have made such a showing in this case.

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[43] IFCA provides a list of violations that give rise to treble damages or to an award of attorney's fees and costs, and this list includes violations of WAC 284–30–330, 350, 360, 370, and 380. RCW 48.30.015(5).

[44] Specifically, to prevail on a CPA claim a plaintiffs must show that the insurer's conduct met the elements of the *Hangman Ridge* five-part test: (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) impacting the public interest, (4) injuring plaintiff in his business or property, and (5) causation. *Hangman Ridge v. Safeco Title*, 105 Wash.2d 778, 780, 719 P.2d 531 (1986). The first element is met by any violation of WAC 284-30-330 through 800. *See Am. Mfrs. Mut. Ins. Co. v. Osborn*, 104 Wash. App. 686, 697, 17 P.3d 1229 (2001). The second and third elements are automatically met in the context of insurance because it is a business which affects the public interest. *See* RCW 48.01.030.

Finally, as a matter of law, a violation of any one of the regulations set forth in WAC 284-30-300 through 800 constitutes a breach of the insurer's duty of good faith. *See Am. Mfrs. Mut. Ins. Co. v. Osborn*, 104 Wash. App. 686, 697-98, 17 P.3d 1229 (2001). Thus, each of MetLife's violations of the WAC regulations discussed above also breached its duty of good faith to plaintiffs.

IV. DAMAGES

Under IFCA, a court "may, after finding that an insurer has acted unreasonably in denying a claim for coverage or payment of benefits or has violated [certain insurance regulations], increase the total award of damages to an amount not to exceed three times the actual damages." RCW 48.30.015(2). The decision to award treble damages is discretionary. *F.C. Bloxom Co. v. Fireman's Fund Ins. Co.*, No. C10-1603RAJ, 2012 WL 5992286, at *6 (W.D. Wash. Nov. 30, 2012) ("the legislature left it to the discretion of superior court judges to decide how much to enhance damages"). *Accord Schreib v. American Family Mut. Ins. Co.*, 129 F. Supp. 3d 1129, 1142 n.12 (W.D. Wash. 2015) ("IFCA's discretionary treble damages").

"Actual damages" are not defined in IFCA, but are generally understood as the amount necessary to compensate plaintiff for an injury or loss. *Morella v. Safeco Ins. Co. of Illinois*, No. C12-0672RSL, 2013 WL 1562032, at *4 (W.D. Wash. Apr. 12, 2013) (citing *Blaney v. Int'l Ass'n of Machinists and Aerospace Workers, Dist. No. 160*, 114 Wash. App. 80, 96 (2002)). The term "actual damages" within the meaning of IFCA excludes emotional distress damages. *Schreib*, 129 F. Supp. 3d at 1141 ("Because IFCA's language is ambiguous as to emotional damages and it sounds in negligence, the court concludes it excludes the availability of emotional damages as 'actual damages.'").[45]

[45] The CPA is comparable. "Emotional damages, such a pain and suffering, and their attendant physical manifestations are not compensable and do not constitute injury under the

Emotional damages are recoverable for an insurer' bad faith. *Anderson v. State Farm Mut. Ins. Co.*, 101 Wash. App. 323, 333 (2000). *Accord Werlinger v. Clarendon Nat. Ins. Co.*, 129 Wash. App. 804, 809 (2005) ("Because bad faith is a tort, a plaintiff may seek emotional damages."). Plaintiffs must present evidence that they suffered emotional distress as a result of the insurer's bad faith actions, not merely evidence that they were distressed by the underlying accident or event in the insurance claim. *Werlinger,* 129 Wash. App. at 809. The evidentiary standard for bad faith emotional distress is different from the evidentiary standard for negligent infliction of emotional distress, which requires the emotional response to be corroborated by objective symptomatology. *See Scanlon v. Life Ins. Co. of North America*, 670 F. Supp. 2d 1181, 1196-97 (W.D. Wash. 2009); *accord Ace v. Aetna Life Ins. Co.*, 139 F.3d 1241, 1250 (9th Cir. 1998). In *Scanlon*, the Court held that the plaintiff's allegations were sufficient to create a jury question as to whether she suffered emotional distress because "a party can rely exclusively on his or her own testimony to establish emotional distress in a bad-faith insurance case." *Scanlon*, 670 F.Supp.2d at 1197 (citing *Woo v. Fireman's Fund Ins. Co.*, 161 Wash. 2d 43, 70 (2007) (affirming an award of emotional distress damages for breach of the duty of good faith despite the fact that there was no medical or expert testimony concerning the emotional distress)). The Ninth Circuit explained that the basic assumption underlying traditional evidentiary standards for emotional distress – "that emotional distress without physical injury is relatively trivial and easily feigned" – does not apply in bad faith insurance cases because "when an insurance company wrongly refuses to honor its obligations, emotional distress is a natural and believable response. Insureds bargained and paid for the security and peace of mind of knowing that reimbursement and financial support will be

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CPA." *Dees v. Allstate Ins. Co.*, 933 F. Supp. 2d 1299, 1310 (W.D. Wash. 2013) (citing *Wash. St. Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wash. 2d 299, 318 (1993)).

provided in the event that a misfortune occurs." *Ace*, 139 F.3d at 1250. In *Anderson*, a ten-month delay caused by an insurance company's bad faith failure to disclose a pertinent coverage entitled a plaintiff "to a trial to prove the amount of damages, both financial and emotional," caused by the insurer's conduct. *Anderson*, 101 Wash. App. at 333. Thus, under Washington law, plaintiffs may seek general damages for their emotional distress caused by MetLife's bad faith without introducing expert testimony showing objective symptomatology of that emotional distress.

The total damage figure may be compiled by calculating the damages amounts for violations of the IFCA, the CPA, and the duty of good faith. *See Hazzard v. Union Bankers Ins. Co.*, No. C13-1162RSL, 2014 WL 773533 at *1 n. 4 (W.D. Wash. Feb. 25, 2014) (calculating the amount-in-controversy figure by compiling damage calculations under the IFCA, the CPA, and attorney's fees); *see also Burke Family Living Trust v. Metropolitan Life Ins. Co.*, No. C09-5388 FDB, 2009 WL 2947196 at *3 (W.D. Wash. Sept. 11, 2009) ("Plaintiff's claims for treble damages amount to $160,000 ($50,000 in contract damages x 3 pursuant to IFCA + [the former] $10,000 CPA ceiling on treble damage)").

Here, plaintiffs are seeking payment for the remaining amounts owed under the insurance contract, plus a trebling of the entire value of the claim pursuant to IFCA. The parties agree that MetLife does not owe any money for personal property loss or loss of use coverage, with the exception of an undisclosed amount pursuant to the Inflation Protection Coverage provision of the contract for Gary Taladay's Loss of Use coverage. Ex. 96.[46] However, plaintiffs contend that MetLife still owes them $77,585 for the unpaid cost of repairs to the home. In addition, plaintiffs seek reimbursement of vendor fees in the total amount of

[46] MetLife's February 19, 2016 payment for personal property coverage was already increased to account for the Inflation Protection coverage.

$27,918.[47] With respect to punitive damages, plaintiffs ask the Court to treble the entire value of the claim under IFCA ($130,086 for structure damage, $97,818 for personal property damage, $33,621 for loss of use, plus $27,918 for the vendor's fees), award up to $75,000 under the CPA ($25,000 CPA ceiling x 3 plaintiffs), and award a total of $104,440 general damages caused by the tort of insurance bad faith ($70 each per day for 746 days for Gary and Denny Taladay), for a total of $1,047,769.

As discussed above, plaintiffs are not without any fault in this case and could have taken certain steps to improve the adjustment of their claim, such as promptly submitting hotel receipts to MetLife for reimbursement. The Court has taken MetLife's arguments into consideration in calculating damages, and does not find it appropriate to award the full amount of damages sought by plaintiffs.

In light of the fact that MetLife has already paid the policy limits for loss of use and personal property damage, the Court finds that the remaining "actual damages" under IFCA are $77,585 for MetLife's erroneous adjustment of plaintiffs' structure claim under the contract. Plaintiffs' original contractor, Mr. Anderton, was willing and able to undertake repairs on the home if MetLife had not wrongfully denied coverage for "gutting" the first floor of the home. Although ordinarily MetLife would not be contractually required to pay the full cost of repairs until after such repairs are undertaken, in this case the house was foreclosed upon in February 2016 as a direct result of MetLife's unreasonable denial of coverage. By authorizing far less than the required scope of repairs, MetLife rendered plaintiffs unable to obtain full payment

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[47] Specifically, plaintiffs have been charged $22,016 by Heritage for storing, photographing, listing, and disposing of more than 2,000 damaged items, and ICDR, Inc. has charged plaintiffs $5,902 for the cost of valuing and depreciating the damaged items. Ex. 86. Plaintiffs allege that the Heritage fees would have been much less, but for MetLife's delay in processing their claim, and the ICDR, Inc. fee would not have been necessary if MetLife had offered Enservio's services to plaintiffs.

under the contract. Mr. Anderton's $130,086 estimated cost of repairs, minus MetLife's $52,501 payment to Chase Bank for the structure, equals $77,585.[48] The Court finds it more appropriate to use Mr. Anderton's $130,086 estimate, rather than Mr. Gibbons' original $122,528 estimate, because Mr. Gibbons' estimate did not include an additional $2,500 for building permits (which would bring his estimate to $125,028) plus a potential additional cost of $5,000-$10,000 for hazardous material remediation ($130,028 – $135,028). Mr. Gibbons' estimate also included $5,000 non-covered code upgrades, but did not include $5,000 for engineering fees. Thus, even Mr. Gibbons' estimate, when understood in context, exceeds $130,000.

MetLife is not liable for plaintiffs' vendor's fees, and therefore the Court denies plaintiffs' claim for an additional $27,918 to pay invoices from Heritage and ICDR, Inc. These fees would have been part of the personal property policy limits. In addition, although the Court has discretion to treble plaintiffs' actual damages award, in light of the issues presented, the Court has doubled plaintiffs' structure damages for a total award under IFCA of $155,170 (less credit for the surplus funds).

The Court also awards plaintiffs jointly the statutory maximum of $25,000 under the CPA, and Gary and Denny Taladay each $37,300 general damages for the tort of insurance bad faith for their emotional distress ($50 each per day x 746 days = $37,300 x 2 = $74,600 total). MetLife's unreasonable conduct in this case created undue stress and substantial hardship for two vulnerable plaintiffs. Abusive insurance practices take a severe toll on claimants, and in

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[48] MetLife will be entitled to a credit for the surplus payment received by the Taladays from the foreclosure sale. A copy of the check will be provided to MetLife to see if agreement can be reached on the amount of the credit within ten (10) days of the date of judgment. If the parties are unable to reach an agreement, the credit will be the subject of a post-judgment modification to be decided by the Court with attorney's fees, and an amended judgment will be entered.

this case MetLife's conduct caused the Taladays to permanently lose the family home they grew up in. Plaintiffs' testimony that MetLife's conduct had severe consequences for plaintiffs' emotional well-being was credible, and the Court agrees that plaintiffs are entitled to compensation for their emotional harm. Plaintiffs will also be awarded attorney's fees and costs in an amount to be determined by post-judgment submission to be filed not later than thirty (30) days of this Order.

V. CONCLUSION

Accordingly, the Court finds that MetLife unreasonably denied coverage under the contract, violated IFCA, the CPA, and breached the duty of good faith. MetLife's conduct in this case required plaintiffs to seek adjustment of their claim through motions practice and Court order, which is not contemplated by the insurance regulations. The Court ORDERS MetLife to pay plaintiffs a total of $254,770 (less credit for any surplus payments from the foreclosure sale), plus attorney's fees, and any additional sum due under the Inflation Protection Coverage provision of the contract. The $254,770 award is comprised of actual and punitive damages under IFCA in the amount of $155,170, $25,000 under the CPA, and $37,300 each for Gary and Denny Taladay (for a total of $74,600) as general damages for MetLife's bad faith.

The Clerk is directed to send a copy of this Order to counsel for both parties.

DATED this 6th day of July, 2016.

JAMES P. DONOHUE
United States Magistrate Judge